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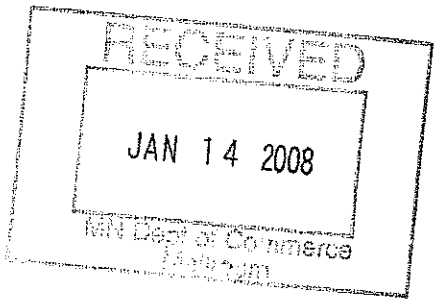
January 11, 2007



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RE: Mesabi Energy Project Draft EIS

Dear Mr. Hargis and Mr. Storm,

The purpose of this letter is to provide comment on draft Environmental Impact Statement (EIS) for the Mesabi Energy Project.

Grand Portage Band of Lake Superior Chippewa is a federally recognized tribe with off-reservation treaty rights to hunt, fish, and gather in the 1854 Ceded Territory. In order to exercise treaty rights it is essential that natural resources are available and safe to eat or utilize. Regulators must ensure that any releases to the environment meet or exceed applicable air and water quality standards that have been established to protect natural resources and human health.

Carbon Capture and Sequestration

Carbon dioxide emissions have been shown to have a powerful impact on global climate and are the primary force behind the current rapid increase in global temperatures. Impacts of climate change are already being seen in the region such as increases in invasive plant species and a northward shift in ranges for birds and mammals. The summer temperature of Lake Superior has been shown to have risen 2.5° C from 1979-2006, far greater than the rise in regional air temperatures. It is vital that carbon dioxide emissions be reduced in order to slow the rise in temperatures and allow ecosystems to adjust, unfortunately this proposed project falls woefully short in this regard.

Annual emissions from the Mesabi Energy project include over 10 million tons of carbon dioxide per year. The draft EIS states that carbon capture and sequestration are currently not feasible for this project. The plant will be designed so it can be modified to capture carbon dioxide in the future if

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reductions are required by regulation or encouraged by economic incentives. Two primary options exist for such capture. Current available technology would result in an approximately 30% reduction in carbon dioxide emissions. The other potential option would require piping the carbon dioxide to sequestration sites in North Dakota or Manitoba, hundreds of miles away. A specific and detailed design for carbon capture, transport, or sequestration has not been developed. Proposed releases of carbon dioxide from this project appear inconsistent with efforts to reduce release of greenhouse gases. It is our understanding that one value of innovative power generation is to reduce emissions. We are extremely concerned about climate change and its effects on natural resources and related treaty rights in the region.

Regional Haze and Visibility

Modeling results indicate that visibility impacts are significant for the Boundary Waters Canoe Area Wilderness and Voyageurs National Park. Impacts from the East Range Site are substantially higher than the West Range Site. Much of the explanation and justification for these impacts appear to center on seasonal or weather events (winter, clouds, fog, precipitation) and potential future reductions from other power producers in the region. This approach seems flawed. Further, it is our understanding that agreement has not been reached over completion of the Best Available Control Technology (BACT) analysis for the project. A determination on what constitutes BACT for sulfur dioxide and nitrogen oxide emissions must be completed, and mitigation plans to offset any impact should then be developed. We have concerns over visibility issues, and support the Minnesota Pollution Control Agency position and issues raised by federal land managers. In addition to visibility issues these gases are the primary sources of acid rain, which can have a disproportionate impact on northern lakes and ecosystems due to the lack of natural buffers in the bedrock.

Mercury

Emissions from the project include up to about 54 pounds of mercury per year. As another new source in Northeastern Minnesota, the project is inconsistent with Minnesota's total maximum daily load (TMDL) goal of reductions in mercury releases. With a statewide goal to reduce anthropogenic sources of mercury 93% from 1990 levels to annual emissions of 789 pounds per year, an increase of 54 pounds per year is significant. The locations proposed for this project are both in relatively close proximity to the newly permitted Minnesota Steel project which is projected to release approximately 70 pounds of mercury per year. We question how permitting would be handled for yet another facility that substantially increases mercury releases.

Of primary concern to us is mercury in fish, and ultimately potential human health effects. Tribal member's health will be put at risk throughout our region due to increased concentrations of mercury. A human health risk assessment to estimate risk to subsistence fishers was conducted and

referenced in the draft EIS. Results indicated increased in health risks from ingestion of fish due to mercury from plant emissions.

Water Quality

Water discharges would primarily consist of cooling tower blowdown blended with additional wastewater from other plant systems. Constituents in the discharge would essentially be the same as those in the water supply but more concentrated as a result of repeated cycles through the process. The number of cycles of concentration would be determined by mercury concentrations and conditions of NPDES permits. More stringent requirements would be required on the East Range Site to comply with regulations for discharges within the Lake Superior Basin (mercury in particular). Anticipated discharges are expected to exceed water quality standards for hardness, total dissolved solids, sulfate, and conductivity. Water quality standards must be met, and if a variance is granted a specific plan and timeline to meet standards must be developed.

Federal law and guidance is specific regarding when a state may grant a water quality standards variance in NPDES permits. EPA's NPDES Permit Writers' Manual chapter 10 discusses the procedures and requirements for states or EPA permit writers when assessing variances from water quality standards. Section 10.2.3 of the NPDES Permit Writers' Manual provides:

> *"Water quality standards variances require similar substantive and procedural requirements as removing a designated use of a waterbody, but unlike use removal, variances are both discharger and pollutant specific, are time-limited, and do not forego the currently designated use of a water body. A variance is appropriate where the state believes that the standard can be ultimately attained. By maintaining the standard rather than changing it, the state will assure that further progress is made in improving the water quality and attaining the standard."*

Once a use has been designated for a particular water body or segment, the water body segment cannot be reclassified for a different use except under very explicit conditions. To remove a designated use, as specified in Section 101(a)(2) of the Clean Water Act, the state must perform a use attainability analysis pursuant to 40 C.F.R. § 131.10(g). 40 C.F.R. 131.10(h) further provides that *"states may not remove designated uses if they are existing uses or if such uses will be attained by implementing effluent limits required under section 301(b) and 306 of the Act and by implementing cost-effective and reasonable best management practices for nonpoint source control".*

A water quality variance is only appropriate if MPCA believes the applicable water quality standards can ultimately be attained. Whether standards can

be obtained requires analysis of all potential alternatives or combinations of alternatives for treatment or operation. When treatment options are rejected because of cost, financial disclosure regarding cost relative to revenues, gross and net, must be presented or a permittee has not met its burden of proof to demonstrate the need for a variance.

Cumulative Impacts and Site Location

A considerable number of projects exist, under development, or are proposed in the region. While we are supportive of economic development, we want to ensure that the environment and natural resources (and related treaty rights that rely on those resources) are properly protected. The cumulative impact from all industrial projects is a vital issue that must be addressed. Results from analysis of the East Range Site indicated that the hazard/cancer risk would exceed Minnesota Department of Health standards in an overlapping area with other mining projects. This is of concern, and cumulative impacts to the resources (air, water, wetlands, wildlife, etc.) must be clearly understood and identified.

In our review of the project, we primarily focused on the preferred West Range Site. Analysis in the draft EIS generally focused on this site and related impacts, and in many cases didn't include as detailed information on the alternative East Range Site. Environmental impacts are among reasons for preferring the West Range including water supply, greater distance from Class I air areas, and location outside of Lake Superior Basin. Cumulative impacts at the East Range Site are potentially high (St. Louis River watershed, along with the Partridge and Embarrass rivers watersheds) due to the number of current or proposed projects adjacent to the site. We are concerned about a potential "bait and switch" approach, under which the East Range Site would suddenly become the preferred location. In that case, we would ask for additional information in the EIS and an opportunity to further evaluate impacts to the environment.

It is unconscionable that this project might be permitted without being able to comply with existing water quality standards, emit 10 million tons of carbon dioxide per year and 54 pounds of mercury, and likely not comply with the Regional Haze rules. Further, the husband and wife team of Thomas A. Micheletti and Julie A. Jorgenson are Excelsior's main partners. Prior to the formation of Excelsior Energy, Ms. Jorgenson was a top executive for NRG, a company that was fined $25 million for abusive practices during the California energy crisis. NRG was an Xcel energy subsidiary. NRG ultimately filed Chapter 11 bankruptcy in 2003, citing a 9.2 billion dollar debt. Thomas A. Micheletti was lobbyist for an Xcel energy subsidiary Northern States Power. Government officials ultimately blamed NRG, its subsidiaries and business partners for manipulating energy markets that caused the California energy crisis.

With out being able to comply with Minnesota environmental statutes, and considering the main partners for Excelsior Energy had ties to the California energy crisis, it is astounding that this project has been exempted from demonstrating need due to qualifications as an "innovative energy project". We support the exploration of innovative technology, however this project does not appear to qualify for such an exemption. In addition to the environmental concerns outlined above, it is our understanding that significant issues exist with rulings from the Minnesota Public Utilities Commission and lack of power purchase agreements.

Both the federal and state governments have the responsibility to work with Indian Tribes on a government-to-government basis. Tribes are sovereign governments, and must be treated as such. Notification and consultation activities must be completed directly with all Tribes potentially affected by the proposed project. The planning process and project implementation must recognize the sovereign status of Tribes and the rights retained by treaty with the United States. This must be more clearly addressed in the draft EIS.

Sincerely,

Norman W. Deschampe
Chairman

c.c. R.T.C. members